

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

KENNETH COLVIN,

Plaintiff,

File No. 2:09-CV-96

v.

HON. ROBERT HOLMES BELL

MICHAEL MARTIN,

Defendant.

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**ORDER APPROVING AND ADOPTING
MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

On February 16, 2010, United States Magistrate Judge Timothy P. Greeley issued a report and recommendation ("R&R") recommending that Plaintiff Kenneth Colvin's motion for temporary restraining order and preliminary injunction be denied. (Dkt. No. 97, R&R; Dkt. No. 2, Mot.) Plaintiff filed objections to the R&R on March 3, 2010. (Dkt. No. 102.)

This Court is required to make a de novo determination of those portions of the R&R to which specific objection has been made, and may accept, reject, or modify any or all of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Plaintiff objects to R&R's recommendation that injunctive relief be denied. Plaintiff contends that the Magistrate Judge committed clear error and abused his discretion by relying on evidence that Plaintiff possessed protein powder in May 2007. Plaintiff contends the evidence is unfounded and irrelevant.

The evidence is not unfounded. In *Colvin v. Caruso*, 2:07-CV-61 (W.D. Mich. Mar. 18, 2008), a previous case filed by Plaintiff, this Court held that Plaintiff's involuntary removal from the Kosher meal program in 2007 was not improper because Plaintiff conceded that he had been in possession of protein powder, which is not Kosher. *Id.* at Dkt. No. 83, R&R; Dkt. No. 89, Order Approving R&R.

Nor is evidence of the protein powder irrelevant. "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Langley v. Prudential Mortg. Capital Co., LLC* 554 F.3d 647, 648 (6th Cir. 2009) (quoting *Winter v. Natural Res. Def. Council, Inc.*, --- U.S. ----, 129 S.Ct. 365, 374 (2008)). The Court's evaluation of Plaintiff's likelihood of success on the merits, the likelihood that he will suffer irreparable harm, and the balance of the equities depends in large part on the sincerity of Plaintiff's religious beliefs. Although Defendant Martin did not refer to Plaintiff's previous possession of non-Kosher items as a basis for denying Plaintiff's request for reinstatement to the Kosher meal program, Defendant Martin did refer to Plaintiff's lack of a sincerely held religious belief in Judaism, which is a prerequisite to participation in the Kosher meal program. (Dkt. No. 35, Ex. M, Martin Aff. ¶ 21.) Whether to issue a preliminary injunction calls for the exercise of the Court's equitable discretion. *Charter Tp. of Huron v. Richards*, 997 F.2d 1168, 1175 (6th Cir. 1993). In determining whether to reinstate Plaintiff to the Kosher meal program prior to a resolution of his claims, the Court is not required to consider the denial of

Plaintiff's reinstatement to the Kosher meal plan in a vacuum. In an exercise of its equitable discretion, the Court may consider all the evidence that bears on the sincerity of Plaintiff's religious beliefs. This includes the basis for his removal from the Kosher meal program.

The Court agrees with the R&R that Plaintiff has failed to meet his burden of proving that the circumstances "clearly demand" the "extraordinary remedy" of preliminary injunctive relief. *See Overstreet v. Lexington-Fayette Urban County Gov't*, 305 F.3d 566, 573 (6th Cir. 2002). Accordingly,

IT IS HEREBY ORDERED that Plaintiff's objections to the R&R (Dkt. No. 102) are **OVERRULED**.

IT IS FURTHER ORDERED that the February 16, 2010, R&R (Dkt. No. 97) is **APPROVED** and **ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motion for a temporary restraining order and preliminary injunction (Dkt. No. 2) is **DENIED**.

Dated: March 24, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE